

Issue Brief: Monitoring Report 2.8 Asset Protection

Meeting: Board

Date: April 19, 2018

Agenda Item #4b

Recommended Committee Action(s):

- That the Board receive the monitoring report for information and provide feedback.

Issue Summary:

The CEO feels the report is incomplete and will not be seeking Board acceptance at this time. However, he would appreciate feedback on the initial report.

Background:

Monitoring Reports are a key Policy Governance tool to assess organizational/CEO performance in achieving Ends (1.0) within Executive Limitations (2.0). A Policy-Governance-consistent Monitoring Process is:

1. CEO sends Monitoring Report and survey link to all board members
2. All board members complete survey on acceptability of Monitoring Report, looking particularly for two things in the Monitoring Report:
 - a. A reasonable interpretation of the policy
 - b. Evidence of compliance with the reasonable interpretation
3. Committee reviews survey results and develops recommendation to accept/not accept Monitoring Report
4. At Board meeting, board accepts Monitoring Report through majority vote (or if not acceptable, determines next steps)

Impacts of Recommended Action(s): Governance: perform key Policy Governance process

Attachments: Monitoring Report: 2.8 Asset Protection

Author: MC/SG/JM

Reviewed by: MC

Approved by: MC

Date: April 9, 2018

the AAATA

2.8 Asset Protection

Monitoring Report for the Period: March 1, 2017 to February 28, 2018

Date of Report: Friday, March 30, 2018

Board Survey due: NA

Finance Committee Review: Tuesday, April 10, 2018

Board Meeting: Thursday, April 19, 2018

the AAATA board;

In accordance with the Board's Policy Manual; I present the April Monitoring report on **Executive Limitation Policy 2.8: Asset Protection**. This report consists of internal report information from staff.

Though these policies were not all in affect during the previous year, I have assembled this report as if they were (where feasible).

I certify that the information is true and complete.

Matt Carpenter,
CEO
Ann Arbor Area Transportation Authority

Policy being monitored:

POLICY TITLE: ASSET PROTECTION

Report p.

2.8 The CEO will not cause, allow or fail to address circumstances in which corporate assets are to be unprotected, inadequately maintained, or unnecessarily risked.

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Further, without limiting the scope of the foregoing by this enumeration, the CEO shall not:

- 2.8.1 Allow board members, staff, and the organization itself to be inadequately insured against theft, embezzlement, casualty, and liability losses. 5
- 2.8.2 Operate without ensuring appropriate risk management. 7
 - A. Subject property, plant, and equipment to improper wear and tear or insufficient maintenance.
 - B. Fail to proactively anticipate the financial requirements needed to maintain assets.
 - C. Operate without internal processes, procedures and systems that encourage informed decisions and would deter and prevent theft, fraud or malfeasance.
- 2.8.3 Unreasonably expose the organization, its Board or staff to claims of liability. 10
- 2.8.4 Allow intellectual property, information and files to be exposed to loss, significant damage or unauthorized access. 12
- 2.8.5 Endanger the organization's public image, credibility, or its ability to accomplish Ends by. 13
 - 2.8.5.1 Operating the organization in a manner that jeopardizes grantor relationships. 15
 - 2.8.5.2 Ignoring the social, environmental and economic implications of major decisions. 16
 - 2.8.5.3 Allowing third-party advertising that violates stated agency guidelines for community standards 17
 - 2.8.5.4 Hiring a former board member as an agency employee or supplier within one year of that member's departure from the Board. 18
 - 2.8.5.5 Hiring a sitting elected official or former elected official that has not been out of office for at least one year from any jurisdiction that appoints members to the AAATA Board. 18
 - 2.8.5.6 Ignoring exploration for innovation or opportunities that open capacity for the organization 19

Executive Limitations Policy 2.8

The CEO will not cause, allow or fail to address circumstances in which corporate assets are to be unprotected, inadequately maintained, or unnecessarily risked.

Compliance: Partial compliance

Current Interpretation & Rationale

The board has comprehensively interpreted this policy in its subsequent policy provisions

- unprotected: 2.8.1, 2.8.2, 2.8.3, 2.8.4
- inadequately maintained: 2.8.2
- unnecessarily risked: 2.8.1, 2.8.2, 2.8.5

No further interpretation is needed. Compliance with sub-policies constitutes compliance with 2.8.

Evidence:

The data to follow, taken cumulatively, demonstrates compliance with this global provision. My interpretations and data will be attached to those provisions, below.

Executive Limitations Policy 2.8.1

...the CEO shall not... Allow Board members, staff, and the organization itself to be inadequately insured against theft, embezzlement, casualty, and liability losses.

Compliance: In compliance

Current Interpretation & Rationale

I interpret this policy to mean that AAATA will carry insurance coverage necessary to reduce and manage risks and ensure service continuity for customers. While many risks cannot be eliminated entirely, insurance can help to manage risks. Adequate coverage will mean that unexpected costs/losses will not jeopardize service for customers or the financial integrity of the agency, and that all infrastructure necessary to provide service to customers can be repaired or replaced in a reasonable period of time without financial hardship for the agency. For board members and staff, adequate insurance means that they will be indemnified and free of personal liability for decisions made when pursuing their duties in good faith.

Therefore, AAATA will hold private or self-insurance adequate to reduce financial risks and ensure service continuity that:

1. Provides full replacement costs for vehicles, buildings
2. Provides cost-effective coverage for liability, including casualty, theft/embezzlement
3. Indemnifies staff and Board members

Evidence:

During the monitoring period I have confirmed the insurance parameters, below, were in place or were put in place. We judge the level of coverage to be adequate based on advice from our broker and our professional experience.

Financial Risks	Coverage Limits	Claims on File (As of 2/21/2018)
1. Replacement of Vehicles and Buildings		
a. Automobile (Vehicles): full replacement for losses within 2700 facility (terminal fire and catastrophic loss)	\$55,758,330 (Adequate to replace all buses and support vehicles.)	\$0
b. Automobile (Vehicles): Collision	Replacement Cost Per Incident	\$0
c. Property: full replacement for building, business personal property, disasters (e.g. earthquake, flood, data systems, tools)	\$25,842,000 Building \$2,437,500 Bus. Personal Prop. \$360,000 Extra Expense \$25,000,000 Flood/Earthquake \$2,139,000 Data Systems \$644,950 Tools	\$0
2. Liabilities		
a. General Liability (Each Occurrence, General Aggregate)	\$2,000,000	\$0
b. General Liability (Personal & Advertising Injury, Products/Completed Operations Aggregate, Damage to Premises Rented)	\$1,000,000	\$0
c. Umbrella Lead Liability (General Aggregate, Products/Completed Operations Aggregate, Personal & Advertising Injury)	\$4,000,000	\$0
d. Employee Benefits Liability	\$300,000	\$0
e. Each Employee Limit	\$1,000,000	\$0
f. Umbrella Excess Liability	\$10,000,000	\$0
g. Automobile	\$1,000,000 per occurrence	\$714,277 total incurred/reserve 5 events
h. Crime	\$500,000	\$0
i. Fiduciary (Each Loss, Each Policy Period)	\$4,000,000	\$0
j. Premises Pollution Legal Liability (Per Pollution Condition Limit, Per Pollution Aggregate)	\$2,000,000	\$0
3. Worker's Compensation		
a. Worker's Compensation	Self-Insured	
b. Worker's Compensation Excess (Aggregate Limit)	\$5,000,000	\$0

Executive Limitations Policy 2.8.2 A

The CEO shall not...operate without ensuring appropriate risk management...

...Subject property, plant, and equipment to improper wear and tear or insufficient maintenance.

Compliance: Partial Compliance. Although facility maintenance activities occur, the agency lacks a documented preventative maintained program for facilities. This will be resolved by March 2019.

Current Interpretation & Rationale:

I interpret this policy to mean that all facilities, vehicles, and durable equipment shall be managed in a manner that maximizes the value of the investment in the asset over its lifespan, ensures safety, and minimizes the risks of premature failure, premature replacement or excessively costly operation. Because they are the greatest potential expense, all vehicles and facilities will be managed with appropriate preventative maintenance practices.

Evidence:

Preventative maintenance practices and programs are in place for buses, support vehicles, maintenance equipment, and IT equipment.

- Buses: All buses have received the preventative maintenance programs recommended by their manufacturers. Records are available for Board inspection update request.
- Facilities: Unclear. Contracts for preventative maintenance are in place and work is regularly done. However, documentation is unclear and there may not be a robust program in place. Ensuring adequate staffing oversight has been a challenge.

Costs for these programs can be seen in the 2018 Budget (p. 33) listed as “Maintenance: Bus Components, Tools and Equipment, Facilities Rehabilitations, and IT- Hardware and Software”.

Executive Limitations Policy 2.8.2 B

The CEO shall not...operate without ensuring appropriate risk management...

...Fail to proactively anticipate the financial requirements needed to maintain assets.

Compliance: In compliance

Current Interpretation & Rationale:

I interpret this policy to mean that the agency is required to develop a budgeting philosophy that

- Use comprehensive lifecycle costing when considering major purchasing/investment decision, so that total costs are understood in advance of decisions.
- Uses multi-year capital and operating projections to comprehensively forecast all costs associated with maintaining and replacing vehicles, facilities and equipment. In particular, this requires plans for replacing the bus fleet.
- Assets should be maintained in a “State-of-Good-Repair” which means able to fulfill their function, adequate for customer and operational needs, and in cost-effective manner.
- Manage the risk of over-extending the agency’s finances by prioritizing maintenance and state-of-good-repair ahead of expansion/growth projects, and avoiding the purchase of assets we cannot afford to maintain throughout their lifecycle, or in the context of other forecasted expenses.

Evidence:

Replacement costs for the bus fleet, support vehicles, and IT equipment are itemized in the 10-year capital plan in the 2018 Budget (p. 33). Also included in the capital plan are facility rehabilitation costs. This plan forecasts financial costs for maintaining the fleet until 2046 and include bus rehabilitation costs (operationalized).

Executive Limitations Policy 2.8.2 C

The CEO shall not...operate without ensuring appropriate risk management...

...Operate without internal processes, procedures and systems that encourage informed decisions and would deter and prevent theft, fraud or malfeasance.

Compliance: In compliance.

Current Interpretation & Rationale:

I interpret this policy to mean that the AAATA must use appropriate loss-control practices to minimize the risk of intentional theft or misdirection of agency resources. Good systems help to keep people honest by eliminating temptation.

Consistent with federal law (2 CFR Part 200.303) the AAATA's internal controls will comply with *Standards for Internal Control for the Federal Government* issued by Comptroller of the US and the *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

Evidence:

While internal controls was not the focus of a recent auditor's report, the auditors did note that they did not notice any inadequacies, stating:

In planning and performing our audit of the basic financial statements, we considered Ann Arbor Area Transportation Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the basic financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.... Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

- *Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards (p.43):*

In addition to the Auditor's report, the CFO reviewed the Internal Control system and judges that the Internal Control systems have been adequate to date and consistent with COSO and Federal law, and that there is no evidence of nor notable risk of malfeasance. However, he recommends that the clarity and staff understanding Internal Controls can be improved. A new document will be completed by the end of the fiscal year.

Executive Limitations Policy 2.8.3

The CEO shall not...

Unreasonably expose the organization, its Board or staff to claims of liability.

Compliance: (THIS SECTION IS INCOMPLETE)

Current Interpretation & Rationale

Evidence:

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Executive Limitations Policy 2.8.4

The CEO shall not...

...Allow intellectual property, information and files to be exposed to loss, significant damage or unauthorized access.

Compliance: Partial Compliance

Current Interpretation & Rationale

I interpret this policy to mean that the AAATA's information (e.g. "private personal information," electronic files, applicant/rider information, financial) will be kept in secure environments that minimize exposure to unauthorized access, theft, fire, or water damage.

Evidence:

An external Security Assessment conducted in January by Merit Network Incorporated identified the following:

- **Private Personal Information, Electronic files:** proper controls are in place: no one gets access without network credentials, access to corporate systems are granted only as required for the job, redundant back-ups of electronic data are conducted daily, firewalls/anti-virus/malware kept up-to-date.
- **Applicant/Rider Information.** While paper information is kept in locked, limited access file cabinets, and electronic information is in password protected, limited access systems; the Security Assessment raised areas questions with HIPPA-compliance. These questions are being reviewed.
- **Financial:** IT Controls audit verifies on annual basis access to financial systems.

Executive Limitations Policy 2.8.5

The CEO shall not...

...Endanger the organization's public image, credibility, or its ability to accomplish Ends

Compliance: In compliance

Current Interpretation & Rationale

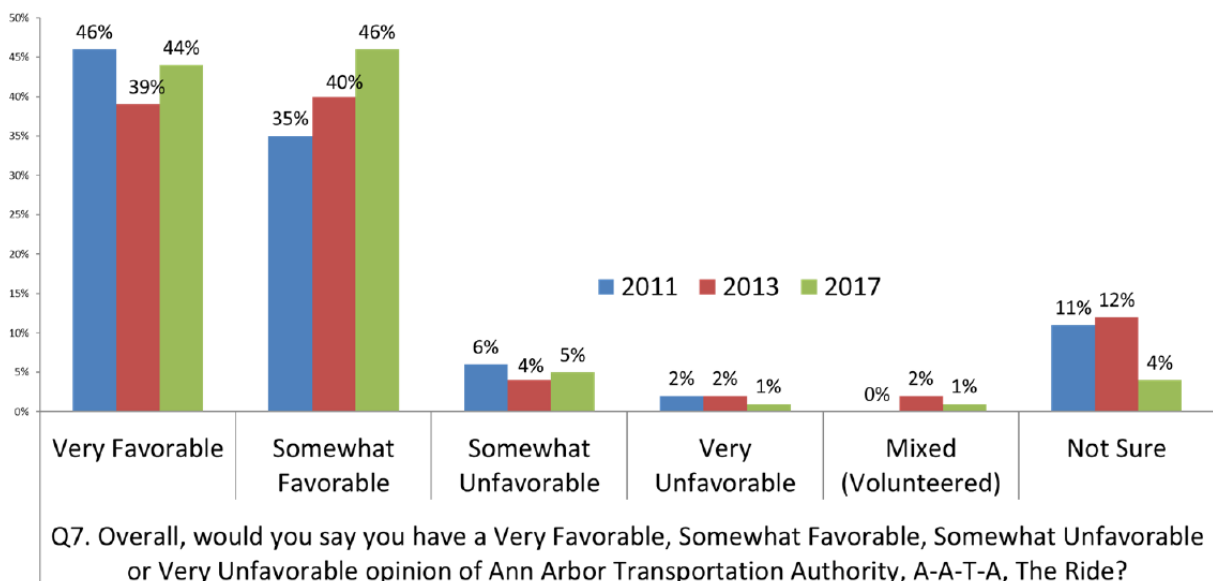
I interpret this policy to mean that the AAATA, its CEO and its staff must always act in a manner that continually earns and renews the public's overall trust and confidence in the agency. This must be done in an environment where many factors are beyond agency control, outside parties may question the agency's credibility, and isolated errors and crisis will occur.

Maintaining credibility does not mean avoiding risk or criticism. The AAATA cannot accomplish its Ends without taking calculated risks, making periodic changes or attracting public attention – some of which will always be critical. The agency should respond honestly when genuinely responsible for events; and should also respond appropriately to inaccurate information that could harm the perception of the agency.

Specifically, the AAATA must be, and be seen as, open, approachable and transparent; honest and trustworthy; and effective and reliable by: Owners (municipal governments & the public), stakeholders and passengers.

Evidence

Public: A community survey of voters in Ann Arbor, Ypsilanti, and Ypsilanti Township conducted in fall 2017 by CJI Research (sample error of +/-4%) found that AAATA is very well respected by the local community: 90% of respondents had somewhat or very favorable opinion of AAATA and its local bus service, TheRide. This is strong, and stronger than it was in 2015. It appears that unfavorability has remained consistent, and fewer people are "unsure."



Riders: An on-board survey of fixed-route riders conducted in fall 2017 by CJI Research (sample error of +/- 1.6%) found that riders scored TheRide's service overall with fairly high satisfaction (5.92 out of 7). It appears that satisfaction has been high for many years, but is on a positive trajectory.

<u>Customer satisfaction, 2006 through 2015</u>						
Multi-year questions - All riders (excluding "don't know")	Mean					
	2017	2015	2013	2011	2009	2006
The Ride service overall	5.92	5.85	5.80	5.93	5.85	5.84

Institutional Partners Survey: not yet conducted. Similar evidence needed for Policy 2.10.3

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Executive Limitations Policy 2.8.5.1

*The CEO shall not ...endanger the organization's public image, credibility, or its ability to accomplish Ends by...
...Operating the organization in a manner that jeopardizes grantor relationships*

Compliance: In compliance.

Current Interpretation & Rationale

I understand this policy to mean that the AAATA will operate in compliance with the expectations made by those outside bodies that routinely provide us with grant funding; in particular the federal and state governments. The AAATA will pro-actively seek to understand and comply with published regulations. The AAATA will not knowingly or through ignorance fail to follow these expectations.

Evidence

Evidence of compliance for this sub-policy is primarily provided via outside audits and assessments by the AAATA auditors, the Federal Transit Administration (FTA), and the Michigan Department of Transportation. The AAATA does not receive grant funding from any other body besides the federal and State governments.

Federal Compliance: In 2015 the FTA found no problems with the AAATA's internal control or business decisions that would jeopardize federal funding. The 2015 Review is available for inspection upon request. The 2018 Review is now in progress. In addition, the AAATA's 2017 audit assessed compliance with federal grant regulations (p. 46) and found that: *In our opinion, Ann Arbor Area Transportation Authority complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended September 30, 2017.*

Since the 2015 Review, the FTA has not indicated any concerns with the AAATA's compliance with any regulations. All federal grants are intact and there are no known risks to these grants.

State Compliance: Grant agreements from the Michigan Department of Transportation are fully awarded and executed for FY2018. During the monitoring period the MDOT has not indicated any concern with the AAATA's compliance with State grants. All state grants are intact and there are no known risks to these grants.

Executive Limitations Policy 2.8.5.2

*The CEO shall not...endanger the organization's public image, credibility, or its ability to accomplish Ends...
...By ignoring the social, environmental and economic implications of major decisions.*

Compliance: (THIS SECTION IS INCOMPLETE)

Current Interpretation & Rationale

Evidence

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Executive Limitations Policy 2.8.5.3

*The CEO shall not...endanger the organization's public image, credibility, or its ability to accomplish Ends by...
...Allowing third-party advertising that violates stated agency guidelines for community standards.*

Compliance: In compliance

Current Interpretation & Rationale

I interpret this policy to mean the AAATA must have and consistently enforce an administrative advertising policy that protects AAATA's image and reputation.

Evidence

the AAATA has an administrative Advertising Policy (see below). It was updated in 2014 with legal counsel to more explicitly preclude political advertisement after a legal challenge. It has not been changed since 2014.

This Policy is enforced: all third-party advertising permitted on the AAATA assets has met the Policy. In the monitoring period, 3 ads were flagged as in potential violation of the policy for promotion of alcohol. Another was flagged for being misleading. Those ads were changed or rejected. There were no legal challenges to the policy during the monitoring period.

AAATA Advertising Policy

A. The AAATA, by permitting commercial advertising in or on its vehicles, shelters, informational material, buildings, and benches, does not thereby intend to create a public forum. Further, AAATA requires that such advertising comply with specified standards to further the purposes of providing revenue for AAATA, increasing ridership, and assuring that AATA riders will be afforded a safe and pleasant environment. AAATA reserves the right to approve all advertising, exhibit material, announcements, or any other display and their manner of presentation.

B. In order to minimize the chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience, advertising in or on AAATA vehicles, in AAATA shelters, buildings, benches or informational material which does any of the following shall be prohibited.

- 1. Contains false, misleading, or deceptive material.*
- 2. Promotes an illegal activity.*
- 3. Advocates violence or crime.*
- 4. Infringes copyright, service mark, title or slogan.*
- 5. Defames or is likely to hold up to scorn or ridicule a person or group of persons.*
- 6. States or implies the endorsement of a product or service by AATA.*
- 7. Contains political or political campaign advertising.*
- 8. Contains advertising that is obscene or pornographic, or in advocacy of imminent lawlessness or violent action.*
- 9. Promotes alcohol or tobacco products.*

Executive Limitations Policy 2.8.5.4 and 2.8.5.5

The CEO shall not...endanger the organization's public image, credibility, or its ability to accomplish Ends by...

...Hiring a former Board member as an agency employee or supplier within one year of that member's departure from the Board.

... Hiring a sitting elected official or former elected official that has not been out of office for at least one year from any jurisdiction that appoints members to the AAATA Board.

Compliance: In compliance

Current Interpretation & Rationale

This policy is unambiguous.

Evidence

I have verified with HR and Purchasing staff: during this period, no hires or suppliers have been former board members or elected officials from AAATA-board appointing jurisdictions. There are former or current AAATA board members or relevant elected officials on staff.

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Executive Limitations Policy 2.8.5.6

*The CEO shall not...endanger the organization's public image, credibility, or its ability to accomplish Ends by...
...Ignoring exploration for innovation or opportunities that open capacity for the organization.*

Compliance: (THIS SECTION IS INCOMPLETE)

Current Interpretation & Rationale:

Evidence and data:

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CEO Notes on Policies

The CEO would ask the Board if it could clarify its language in to following policies:

- 2.8.5.2 – Social, environmental, economic sustainability. This is somewhat ambiguous requirement. It's placement in this section also feels awkward (asset protection). It may have been put here during initial drafting as a placeholder.
- 2.8.5.6 – Innovation - This is an ambiguous term and feels awkward in this section (asset protection). It may have been put here during initial drafting as a placeholder.

I have asked our legal counsel to advise me on interpreting policy 2.8.3.

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(To be filled in based on Board action after submission)

Policy: 2.8 Asset Protection

Date Submitted: TBD

Date of Board Response: TBD

The Board has received and reviewed the CEO's Monitoring Report references above. Following the Board's review and discussion with the CEO, the Board makes the following conclusions:

Executive Limitations Report (select one)

The Board finds that the CEO:

- A. Is in compliance
- B. Is in compliance, except for item(s) noted.
- C. Is making reasonable progress toward compliance.
- D. Is **not** in compliance or is **not** making reasonable progress toward compliance
- E. Cannot be determined.

Board notes: